



# The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

## Publication Policy

# Disciplinary Tribunals and Other Adjudication Hearings

August 2017



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# 1. INTRODUCTION

- 1.1 This document sets out the Bar Tribunals and Adjudication Service Policy (BTAS) policy on the publication of information relating to Disciplinary Tribunals and other adjudication hearings.
- 1.2 BTAS is responsible for appointing and administering:
- Disciplinary Tribunals for barristers facing charges of professional misconduct under BSB Handbook Part 5B Enforcement Regulations; The Disciplinary Tribunal Regulations
  - Panels appointed under the Interim Suspension Rules of the BSB Handbook Part 5D Enforcement Regulations; The Interim Suspension and Disqualification Regulations
  - Panels appointed under the Fitness to Practise Rules of the BSB Handbook Part 5E Enforcement Regulations; The Fitness to Practise Regulations.
  - Panels appointed under the Inns' Conduct Committee (ICC) Rules appointed to consider admission and disciplinary cases brought by the Inns of Court against student members or applicants for admission to an Inn of Court.
- 1.3 The governing principle adopted by BTAS in relation to the publication of disciplinary findings against barristers is that the body which has responsibility for the process leading to a publishable disciplinary finding should publish the outcome of that procedure. This shall include publication of the outcome of any appeal against those disciplinary findings. The BTAS Publications Policy applies to findings made by Disciplinary Tribunals from 1 February 2013<sup>1</sup>.
- 1.4 BTAS is committed to playing its part in providing information that will further the regulatory objectives set out in the Legal Services Act 2007. The publication of forthcoming disciplinary hearing dates serves a number of purposes consistent with the regulatory objectives, in particular:
- protecting and promoting the public interest; and

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<sup>1</sup> i.e.: Details of publishable findings made by Disciplinary Tribunals will be provided on the BTAS website from the date of the establishment of BTAS (on 1 February 2013) onwards. Publishable findings made by Disciplinary Tribunals prior to that date are to be found on the Bar Standards Board website.

- protecting and promoting the interest of consumers.

**1.5 In addition, in developing this policy BTAS has had regard to the following principles of:**

- Proportionality
- Accountability
- Consistency
- Transparency<sup>2</sup>

1.6 BTAS is subject to a range of legislative duties in relation to information governance. The Data Protection Act imposes a particular set of duties in respect of information disclosure: for more detail see the BTAS Information Security policy and the BTAS Disclosure Policy.

1.7 BTAS is committed to being transparent and open about its processes and decisions, whilst protecting the confidentiality of defendant barristers, referred barristers, student members/prospective members of the Inns of Court, witnesses and other people, where necessary. Information published that includes the name or reveals the identity of a third party will be redacted.

1.8 BTAS is committed to presenting information to enquirers in a form that is accessible and in line with best practice.

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<sup>2</sup> principles of good regulation identified by 'Better Regulation Executive' in 2000

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## 2. HEARINGS

### Public and Private Hearings

- a. All Disciplinary Tribunals are held in public (unless there has been a ruling by a Directions Judge or disciplinary panel that the hearing should take place in private – see paragraph 2.12 below) and any person, whether connected with the proceedings or not, can attend.
- b. Hearings under the Interim Suspension and Disqualification Regulations are not ordinarily held in public, unless so requested by the defendant barrister.
- c. Hearings under the Fitness to Practise Regulations are not ordinarily held in public, unless so requested by the barrister concerned.
- d. Hearings under the Inns' Conduct Committee Rules may be held in public unless the Chair of the Inns' Conduct Committee or the Chairman of the Panel of his/her own motion or on request from an Inn or an applicant/student directs that the hearing not be in public.

### Information about forthcoming hearings that BTAS will publish

- 2.1 Information regarding the public disciplinary hearings listed in paragraph 2 (a) above will be made available by the following methods:
  - the BTAS website; and
  - telephone or written enquiries to BTAS.
- 2.2 The information about hearing dates will be available, on the date that, or shortly after that BTAS issues a Convening Order for a Disciplinary Tribunal on behalf of the President of the Council of the Inns of Court (COIC).
- 2.3 In most cases, details of forthcoming hearings will be available between two to three weeks prior to the date of the hearing. These time periods can vary and information may be available at an earlier point or only very shortly before the hearing date.
- 2.4 The details available to the public about a forthcoming hearing will be:
  - name of the barrister;
  - the barrister's Inn and date of call;

- the type of hearing;
- the names of the panellists and their current Register of Interests information;
- the paragraphs of the Bar Standards Board's Handbook under which the charges are laid;
- the venue and time of the hearing.

### **Information about forthcoming hearings that BTAS will not publish**

- 2.5 Details of preliminary hearings that are held in private will not be made available to the public.
- 2.6 Details of hearings under the Fitness to Practise Regulations that are held in private will not be made available to the public.
- 2.7 Details of hearings under the Interim Suspension and Disqualification Regulations that are held in private will not be made available to the public.
- 2.8 Details of hearings under the Inns' Conduct Committee Rules will not routinely be made available to the public as the proceedings do not relate to members of the Bar and thus the need to provide the public with information about a hearing which might affect an individual member of the Bar's ability to practice does not arise.

### **Publication on the BTAS website**

- 2.9 BTAS will publish on its website details of all relevant forthcoming hearings and the information posted will be in accordance with paragraph 2.4 above.
- 2.10 In circumstances where a hearing is adjourned or goes part heard following a posting on the website, the entry will be amended to indicate the change to the hearing but will remain on the website pending a new, confirmed date for the resumed hearing. Once a new date for the hearing has been confirmed, the posting will be amended and will stay on the website in accordance with the terms of paragraph 2.13 below.
- 2.11 In circumstances where a member of a panel is no longer able to sit, the entry will be amended and the name of the substitute panel member provided as soon as possible.
- 2.12 If a Directions Judge or disciplinary panel order that a hearing specified at 2(a) above shall take place in private, the fact of the hearing will still be posted on the website and all information in paragraph 2.4 above will be listed. However, the posting will

make clear that the hearing has been ordered to take place in private and therefore members of the public are not able to attend.

### **Other means of providing information**

2.13 Telephone and written enquiries requesting information about forthcoming hearings can be made to BTAS. Anyone making a telephone or written enquiry about forthcoming hearings is entitled to be given the information listed in paragraph 2.4 above.

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## 3. OUTCOME OF HEARINGS

### Information available to the public on the BTAS website following a hearing

- 3.1 Information regarding the outcome of the public hearings listed in paragraph 2 (a) above will be made available by the following methods:
- the BTAS website; and
  - telephone or written enquiries to BTAS.
- 3.2 Where a disciplinary or appeal panel dismisses all the charges against a barrister, details of the outcome will not be in the public domain save where the barrister requests publication. Therefore, even if the posting in relation to the hearing date remains on the website after the conclusion of the case, no information will be provided by BTAS about the dismissed charges.
- 3.3 Where a case has been part dismissed and part proved, details of the outcome will be available in line with paragraph 3.2 above and/or paragraph 3.4 below depending on the outcome.
- 3.4 In circumstances where a charge(s) has been admitted or proved, the findings will be posted on the BTAS website in accordance with BSB Enforcement Regulation rE198 and within fourteen days of the finding being declared regardless of whether the sentence has been pronounced or an appeal had been submitted.
- 3.5 All findings will remain on the website for a minimum of 2 years (see paragraph 9 below).
- 3.6 Findings of Disciplinary Tribunals that do not result in a sentence involving a period of suspension or disbarment will be removed from the website after 2 years.
- 3.7 Where a finding of a Disciplinary Tribunal involves a period of suspension of 12 months or less, the finding will be taken down from the BTAS website after 10 years.
- 3.8 Where a professional misconduct finding involves a finding that includes a suspension of over 12 months or a disbarment combined with other orders, the full details of the finding will remain posted on the BTAS website indefinitely.

- 3.9 The periods referred to in paragraphs 3.6 - 3.8, will run from the following dates:
- a. where no Notice of Appeal has been submitted within the 21 day period, from the date of the end of the hearing; or
  - b. where a Notice of Appeal has been submitted within the 21 day period, from the date the Visitors to the Inns of Court or, post 7 January 2014 the High Court, determined the appeal.
- 3.10 Where a number of sentences are imposed on a single occasion, whether for a single offence or for multiple offences, publication of all sentences will continue for as long as that applicable to the longest sentence or (in the case of consecutive suspensions) the total sentence.
- 3.11 Where a barrister is found to have committed further professional misconduct at a time when previous findings were still being published, those earlier findings will continue to be published (and, if appropriate, re-published) until the publication period for the later findings expires.
- 3.12 Where publication is considered by the Chair to be in the public interest, the decision of a full hearing of the Fitness to Practise Panel shall be provided in writing to any person to whom he or she considers appropriate to do so.

### **Information not available on the BTAS website to the public following a hearing**

- 3.13 Decisions of Inns' Conduct Committee panels will not be published by BTAS (paragraph 2.8 above refers).

### **Appeal against finding**

- 3.14 All findings will be listed initially as "open to appeal" and such listings will remain in place until either the 21 day period for submission of a Notice of Intention to Appeal has expired without such a Notice being submitted or, in cases where a Notice of Appeal is submitted, until the appeal has been determined by the Visitors of the Inns of Court or post 7 January 2014 the High Court, whichever is later.
- 3.15 Where no Notice of Appeal has been submitted within the 21 day period, the periods specified in 3.6 - 3.8 shall run from the date of the end of the hearing.

- 3.16 Where a Notice of Appeal is submitted within the 21 day period, the periods specified in 3.6 - 3.8 shall run from the date on which the Visitors of the Inns of Court or post 7 January 2014 the High Court determine the appeal.
- 3.17 Where the High Court decide to allow an appeal in full, the findings and full record regarding the hearing(s) will be removed from the BTAS website. A barrister may request that the fact the appeal has been allowed be published on the BTAS website, however, the entry will not include any details relating to the appeal apart from a statement that it was allowed. Such requests should be addressed to the Registrar at the BTAS office.
- 3.18 Where an appeal is allowed in part, the findings which were overturned on appeal will be removed from the BTAS website, unless the barrister requests otherwise (see paragraph 3.17 above) but all other findings will remain on the BTAS website for the relevant period stipulated by this policy.
- 3.19 In the interests of transparency and in accordance with 1.3 above the outcomes of all appeals against the findings of Disciplinary Tribunals, in the form of judgements issued by the Visitors or post 7 January 2014 the High Court, will be indefinitely posted on the BTAS website.

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## 4. PANEL MEMBERS

### Panel members' names and interests

- 4.1 Details of BTAS Disciplinary Tribunal and Inns' Conduct Committee panel members' names and their current register of interests' information, whether sitting on hearings related to barristers, applicants to an Inn of Court, or students, will be published on the BTAS website.
- 4.2 Details of Tribunal Appointment Board members responsible for appointing BTAS panel members and their current register of interests' information will similarly be published.

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## 5. COMPLAINTS

### Concerns or complaints

- 5.1 Concerns or complaints (other than those referred to in 5.2 below) about the application of this policy in individual cases should be addressed to the Registrar at the BTAS office. Thereafter, if the barrister remains dissatisfied, complaints should be directed to the COIC Director. In the event that concerns remain unresolved, the matter can be put before the COIC Board.
- 5.2 Concerns or complaints regarding:
- a. Decisions to hold a hearing in public or private
  - b. The publication of findings on the BTAS website

can also be brought to the attention of the BTAS Registrar. However, the BSB's Disciplinary Tribunal Regulations apply in both areas and the BTAS Registrar, COIC Director or COIC Board have no power to vary or overturn them. Concerns or complaints will only be considered if they seek a resolution that would be in accordance with the Regulations.

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